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10/672,448

09/26/2003

Simon Greenshields

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03/18/2008

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EXAMINER

POLLOCK, GREGORY A

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/672,448	Applicant(s) GREENSHIELDS ET AL.	
	Examiner GREG POLLOCK	Art Unit 4182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/08/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the claims filed 09/26/2003.
2. Claims 1-66 have been examined.

Information Disclosure Statement

3. The information disclosure statement filed 01/08/2004 has been received and placed on record in the file.

Specification

4. The specification is objected to because of the following minor informalities:
 - a. Paragraph [0080], lines 3-8; reads "The computer system 102 may be used to electronically transfer funds from the accounts of the SPV 56, such as, for example, the collections account 102, the reserve account 106, the reserve investment account 108, the damages and indemnity account 110, and the working capital account 112, to other accounts, such as, for example, an account 114 of the power distributor 52, an account 116 of the power supplier 116, and an account 118 of the third party guarantor 66." should be correct to "The computer system 102 may be used to electronically transfer funds from the accounts of the SPV 56, such as, for example, the collections account 104, the reserve account 106, the reserve investment account 108, the damages and indemnity account 110, and the working capital account 112, to other accounts, such as, for example, an account 114 of the power distributor

52, an account 116 of the power supplier 60, and an account 118 of the third party guarantor 66.”

Appropriate correction is required.

Claim Objections

5. The specification is objected to because of the following minor informalities:
 - a. Claim 14, lines 2-3 reads “such that the revised first contract obligates the recipient to pay a fixed price for to the first entity” should be corrected to “such that the revised first contract obligates the recipient to pay a fixed price to the first entity”.
 - b. Claim 22, lines 2-3 reads “the first business entity with from proceeds from the first revised contract” should be corrected to “the first business entity from proceeds from the first revised contract”.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 16, 38 and its dependents, and 48 and its dependents are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the

invention. Claims 16, 38, and 48 recite the limitation "terms of the second contract are similar to the revised first contract". It is unclear if the terms of the second contract are exactly the same as the revised first contract, or if they are somehow different. For the purpose of compact prosecution and based on the specification [¶44] and claims, the office assumes that the second contract differs from the revised first contract only in the price of the delivered commodity.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-5, 8, 9, 13, 15, 16, 18, 19, 22, 24, 26, 29, 31, 33, 35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and Figures 1 and 2, labeled prior art.) in view of Dines et al. (U.S. Application No. 09/802325).

As per claim 1, Applicant's background of invention teaches a **method of monetizing a first contract** (Power Purchase Agreement ("PPA") [¶12], [¶14, lines 4-9] and [¶22, lines 1-2]) **to supply a commodity from a supplier** (power

company [Figures 1 and 2, element 10]) **to a recipient** (utility [Figures 1 and 2, element 12]), **comprising:**

transferring the first contract to a first entity (the PPA is transferred to a special purpose vehicle (SPV) [¶14, lines 4-9] and [¶22, lines 2-6]);

revising the first contract such that the first entity may provide the commodity to the recipient from sources other than specified in the first contract ([¶14, lines 9-12] and [¶22, lines 2-6]);

establishing a second contract (mirror PPA [Figures 1 and 2]) **to supply the commodity from a second entity** (power marketer [Figures 1 and 2, element 18]) **to the first entity** ([¶16, lines 1-3]);

and guaranteeing, by a third-party guarantor (guarantor [Figure 2, element 20]), **payment obligations of the first entity to the recipient arising out of the revised first contract** ([¶22, lines 6-9]).

Applicant's background of invention does not teach a method **wherein the price of the commodity in the second contract is less than the price of the commodity in the revised first contract.**

Dines et al. teach a method **wherein the price of the commodity in the second contract is less than the price of the commodity in the revised first contract** ([¶15 - 16]).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Dines et al. with that of the Applicant's background of invention such that the price of the commodity in the second contract is less than the price of the commodity in the revised first contract. The motivation to combine the teachings would be to provide a mechanism whereby the supply contract can be monetized that takes profit out of a supply relationship, thus increasing the immediate value of the entities involved.

As per claim 3, the rejection of claim 1 has been addressed.

Applicant's background of invention teaches a method **wherein the first entity is owned by the supplier** ([¶14, lines 4-8]).

As per claim 4, the rejection of claim 1 has been addressed.

Applicant's background of invention teaches a method **further comprising: offering debt securities from the first entity** (bonds [¶15, lines 1-2]); **and paying, from the first entity to the supplier, with proceeds from the offering** ([¶15, lines 2-3]).

As per claim 5, the rejection of claim 4 has been addressed.

Applicant's background of invention teaches a method **further comprising paying principal and interest on the debt securities from the first entity to holders of the debt securities** ([¶22, lines 3-5]).

As per claim 8, the rejection of claim 5 has been addressed.

Applicant's background of invention teaches a method **further comprising establishing an administrative services agreement between the first entity and an administrative agent** ([¶23, lines 2-5]).

As per claim 9, the rejection of claim 5 has been addressed.

Applicant's background of invention teaches a method **further comprising establishing the first entity as a subsidiary of the supplier** ([¶14, lines 4-8]).

As per claim 13, the rejection of claim 1 has been addressed.

Applicant's background of invention teaches a method **further comprising the third-party guarantor guarantying payment obligations of the second entity to the first entity arising out of the second contract** ([¶22, lines 6-11]).

As per claim 15, Applicant's background of invention teaches a method to **supply power from a qualifying facility** (qualifying facility [Figures 1 and 2,

element 11]) **owned by a first power company** ([¶14, lines 1-4]) **to a power distributor** (utility [Figures 1 and 2, element 12]) **and revising the first contract such that the first business entity may provide power to the power distributor from sources other than the qualifying facility** (the PPA is transferred to a special purpose vehicle (SPV) as a revised PPA [¶14, lines 4-14])

All of the remaining limits of Claim 15 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 16, the rejection of claim 15 has been addressed.

Applicant's background of invention teaches a method **wherein quantity and capacity terms of the second contract are similar to the revised first contract** ([¶16]).

As per claim 18, the rejection of claim 15 has been addressed.

All of the limits of Claim 18 have been previously addressed in Claim 3 and is therefore rejected using the same prior art and rationale.

As per claim 19, the rejection of claim 15 has been addressed.

All of the limits of Claim 19 have been previously addressed in Claim 4 and is therefore rejected using the same prior art and rationale.

As per claim 22, the rejection of claim 19 has been addressed.

All of the limits of Claim 22 have been previously addressed in Claim 5 and is therefore rejected using the same prior art and rationale.

As per claim 24, the rejection of claim 22 has been addressed.

All of the limits of Claim 24 have been previously addressed in Claim 8 and is therefore rejected using the same prior art and rationale.

As per claim 26, the rejection of claim 22 has been addressed.

Applicant's background of invention teaches a method **wherein the power distributor is a government agency for managing the power procurement for a governmental entity** ([¶2]).

As per claim 29, the rejection of claim 26 has been addressed.

Applicant's background of invention teaches a method **wherein the power distributor is a government agency for managing the power procurement for a state of the United States** ([¶2]).

As per claim 31, the rejection of claim 22 has been addressed.

All of the limits of Claim 31 have been previously addressed in Claim 9 and is therefore rejected using the same prior art and rationale.

As per claim 33, the rejection of claim 22 has been addressed.

All of the limits of Claim 33 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 35, the rejection of claim 15 has been addressed.

All of the limits of Claim 35 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 37, the rejection of claim 15 has been addressed.

Applicant's background of invention teaches a method **wherein establishing the second contract includes providing a liquidated damages clause in the second contract obligating the power supplier to pay liquidated damages to the first entity under certain specified conditions in the second contract ([¶20, lines 1-5] and [¶22, lines 6-9]), and further comprising a third-party guarantor guarantying payment obligations of the power supplier under the second contract, including the liquidated damages ([¶22, lines 6-9]).**

10. Claims 2, 10, 17, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and

Figures 1 and 2, labeled prior art.) in view of Dines et al. (U.S. Application No. 09/802325) and in further view of Remley et al. (U.S. Application No. 09/802325).

As per claim 2, the rejection of claim 1 has been addressed.

Applicant's background of invention and Dines et al. do not teach a method **wherein the third-party guarantor's guaranty of the payment obligations of the first entity is capped by a maximum liability limitation amount.**

Remley et al. teaches a method **wherein the third-party guarantor's guaranty of the payment obligations of the first entity is capped by a maximum liability limitation amount ([¶10] and [¶78]).**

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Remley et al. with that of the Applicant's background of invention and Dines et al. such that the third-party guarantor's guaranty of the payment obligations of the first entity is capped by a maximum liability limitation amount. The motivation to combine the teachings would be to increase protection to the guarantor for large revenue percentage deviations from historic values.

As per claim 10, the rejection of claim 9 has been addressed.

Applicant's background of invention and Dines et al. do not teach a method **wherein the second entity is a subsidiary of the third-party guarantor.**

Remley et al. teaches a method **wherein the second entity** (producer [Figure 1, element 12]) **is a subsidiary of the third-party guarantor** (guarantor [Figure 1, element 10] and [¶7], [¶28 – 29], where the guarantor is the controlling entity which decides business matter for the producer.).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Remley et al. with that of the Applicant's background of invention and Dines et al. such that the second entity is a subsidiary of the third-party guarantor. The motivation to combine the teachings would be to greatly reduce the risks associated with the second entity for obtaining payment and for the guarantor on ensuring the transactions between the first entity, second entity, and power distributor is competed.

As per claim 17, the rejection of claim 15 has been addressed.

All of the limits of Claim 17 have been previously addressed in Claim 2 and is therefore rejected using the same prior art and rationale.

As per claim 32, the rejection of claim 31 has been addressed.

All of the limits of Claim 32 have been previously addressed in Claim 10 and is therefore rejected using the same prior art and rationale.

11. Claims 6, 11, 12, 20, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and Figures 1 and 2, labeled prior art.) in view of Dines et al. (U.S. Application No. 09/802325) and in further view of Blanz et al. (U.S. Application No. 10/995039).

As per claim 6, the rejection of claim 5 has been addressed.

Applicant's background of invention and Dines et al. do not teach a method **wherein a debt service coverage ratio of the debt securities is between 1.00 and 1.01.**

Blanz et al. teaches a method **wherein a debt service coverage ratio of the debt securities is between 1.00 and 1.01** ([¶9] [¶105] [¶179]).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Blanz et al. with that of the Applicant's background of invention and Dines et al. such that a debt service coverage ratio of the debt securities is between 1.00 and 1.01. The motivation to

combine the teachings would be to ensure that the first entity could be underwritten such as not to hindered the financing of the monetization.

As per claim 11, the rejection of claim 4 has been addressed.

Applicant's background of invention and Dines et al. do not teach a method **wherein the debt securities include senior secured notes**.

Blanz et al. teaches a method **wherein the debt securities include senior secured notes** (senior bonds [¶70 - 78], [¶149], [¶151], [¶159], [¶178], [¶180]).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Blanz et al. with that of the Applicant's background of invention and Dines et al. such that the debt securities include senior secured notes. The motivation to combine the teachings would be to ensure that the first entity, and thus the power company, could be repaid prior to payment of subordinated notes, bond holders.

As per claim 12, the rejection of claim 4 has been addressed.

Applicant's background of invention and Dines et al. do not teach a method **wherein the debt securities include subordinated notes**.

Blanz et al. teaches a method **wherein the debt securities include subordinated notes** (junior or subordinated bonds [¶149], [¶151], [¶159], [¶178], [¶180]).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Blanz et al. with that of the Applicant's background of invention and Dines et al. such that the debt securities include senior secured notes. The motivation to combine the teachings would be to ensure that the first entity, and thus the power company, could be repaid prior to payment of subordinated notes, bond holders.

As per claim 20, the rejection of claim 19 has been addressed.

All of the limits of Claim 20 have been previously addressed in Claim 11 and is therefore rejected using the same prior art and rationale.

As per claim 21, the rejection of claim 19 has been addressed.

All of the limits of Claim 21 have been previously addressed in Claim 12 and is therefore rejected using the same prior art and rationale.

As per claim 23, the rejection of claim 22 has been addressed.

All of the limits of Claim 23 have been previously addressed in Claim 6 and is therefore rejected using the same prior art and rationale.

12. Claims 7, 25, 48, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and Figures 1 and 2, labeled prior art.) in view of Dines et al. (U.S. Application No. 09/802325) and in further view of Pokorny et al. (U.S. Application No. 10/306881).

As per claim 7, the rejection of claim 5 has been addressed.

Applicant's background of invention teaches a method **further comprising sufficiently funding a reserve account of the first entity such that the first entity can pay the principal and interest on the debt securities** ([¶15, lines 2-5]).

Applicant's background of invention and Dines et al. do not teach a method **a force majeure of at least six months**.

Pokorny et al. teaches a method **a force majeure of at least six months** ([¶97] and [¶102]).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Pokorny et al. with that of the

Applicant's background of invention and Dines et al. such that a the first entity will have sufficient funding in a reserve account to pay the principle and interest on the debt securities in the event of a force majeure of at least six months. The motivation to combine the teachings would be to ensure that the security holders of the first entity can be paid during a force majeure.

As per claim 25, the rejection of claim 22 has been addressed.

All of the limits of Claim 25 have been previously addressed in Claim 7 and is therefore rejected using the same prior art and rationale.

As per claim 48, All of the limits of Claim 48 have been previously addressed in Claims 1, 4, 7, 15, and 22 and is therefore rejected using the same prior art and rationale.

As per claim 51, the rejection of claim 48 has been addressed.

All of the limits of Claim 51 have been previously addressed in Claim 37 and is therefore rejected using the same prior art and rationale.

13. Claims 14, 27, 28, 30, 34, 36, 38-40, 43, 45-47, and 52-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and Figures 1 and 2, labeled prior art.) in view of Dines et

al. (U.S. Application No. 09/802325) and in further view of Helms (U.S. Application No. 10/342899).

As per claim 14, the rejection of claim 1 has been addressed.

Applicant's background of invention teaches a method **wherein revising the first contract includes revising the first contract such that the revised first contract obligates the recipient to pay a fixed price for to the first entity for capacity to supply the commodity** ([¶ 12] and [¶14, lines 8-14]).

Applicant's background of invention and Dines et al. do not teach a method that **obligates the recipient to pay an index-based price for the commodity**.

Helms teaches a method that **obligates the recipient to pay an index-based price for the commodity** (a "spread" between the costs of funds furnished the Trust and the purchased obligation yields [¶37]).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Helms with that of the Applicant's background of invention and Dines et al. such it obligates the recipient to pay an index-based price for the commodity. The motivation to combine the teachings would be to provide a mechanism whereby the supply relationship cash flows can be approximately matched with undervalued Vendor

Capital Obligation maturities to capture Intermediation Profits through the barter of these Obligations in settlement of supply invoices.

As per claim 27, the rejection of claim 26 has been addressed.

Applicant's background of invention does not teach a method **further comprising the power distributor offering debt securities, wherein the power distributor is obligated to pay the first business entity for power under the revised first contract prior to servicing the debt securities offered by the power distributor.**

Helms teaches a method that **further comprising the power distributor** ([¶57, lines 8-13]) **offering debt securities** (BIP Units [¶58, lines 10-12] and [¶53]), **wherein the power distributor is obligated to pay the first business entity for power under the revised first contract prior to servicing the debt securities offered by the power distributor** ([¶62]).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Helms with that of the Applicant's background of invention and Dines et al. such that the power distributor offering debt securities, wherein the power distributor is obligated to pay the first business entity for power under the revised first contract prior to servicing the debt securities offered by the power distributor. The motivation to

combine the teachings would be that the BIP Trust structure is the most conceptually simplest to link funding to the commercial transaction for purposes of default protection and credit risk.

As per claim 28, the rejection of claim 26 has been addressed.

All of the limits of Claim 28 have been previously addressed in Claim 27 and is therefore rejected using the same prior art and rationale.

As per claim 30, the rejection of claim 29 has been addressed.

Applicant's background of invention and Dines et al. do not teach a method **wherein the power distributor is the California Department of Water Resources.**

Helms teaches a method **wherein the power distributor is the California Department of Water Resources** ([¶57, lines 8-13].

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Helms with that of the Applicant's background of invention and Dines et al. such that the power distributor is the California Department of Water Resources. The motivation to combine the teachings would be that the merchant power generation industry provides an excellent example of a fertile BIP Trust application since the

California Department of Water Resources contracts were structured in a crisis environment and in far more favorable power market conditions than what existed at the time of the application and has a high proportion of Supply Value relative to the total Contract value, which allows for greater capture of Cost of Capital Arbitrage through the use of a the invention of Helms.

As per claim 34, the rejection of claim 33 has been addressed.

Applicant's background of invention and Dines et al. do not teach a method **wherein paying the principal and interest on the debt securities includes paying the principal and interest on the debt securities from excess revenue of the first business entity due to the price difference of the power between the revised first contract and the second contract.**

Helms teaches a method **wherein paying the principal and interest on the debt securities includes paying the principal and interest on the debt securities from excess revenue of the first business entity due to the price difference of the power between the revised first contract and the second contract** ([¶7, lines 17-20]).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Helms with that of the Applicant's background of invention and Dines et al. such that paying the

principal and interest on the debt securities includes paying the principal and interest on the debt securities from excess revenue of the first business entity due to the price difference of the power between the revised first contract and the second contract. The motivation to combine the teachings would be to provide a mechanism whereby the supply relationship cash flows can be approximately matched with undervalued Vendor Capital Obligation maturities to capture Intermediation Profits through the barter of these Obligations in settlement of supply invoices.

As per claim 36, the rejection of claim 15 has been addressed.

All of the limits of Claim 36 have been previously addressed in Claim 14 and is therefore rejected using the same prior art and rationale.

As per claim 38, All of the limits of Claim 38 have been previously addressed in Claims 1, 14, and 15, and is therefore rejected using the same prior art and rationale.

As per claim 39, the rejection of claim 38 has been addressed.

All of the limits of Claim 39 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 40, the rejection of claim 39 has been addressed.

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All of the limits of Claim 40 have been previously addressed in Claim 4 and is therefore rejected using the same prior art and rationale.

As per claim 43, the rejection of claim 38 has been addressed.

All of the limits of Claim 43 have been previously addressed in Claim 3 and is therefore rejected using the same prior art and rationale.

As per claim 45, the rejection of claim 38 has been addressed.

All of the limits of Claim 45 have been previously addressed in Claim 27 and is therefore rejected using the same prior art and rationale.

As per claim 46, the rejection of claim 40 has been addressed.

All of the limits of Claim 46 have been previously addressed in Claim 13 and is therefore rejected using the same prior art and rationale.

As per claim 47, the rejection of claim 46 has been addressed.

All of the limits of Claim 47 have been previously addressed in Claim 37 and is therefore rejected using the same prior art and rationale.

As per claim 52, All of the limits of Claim 52 have been previously addressed in Claims 1, 15, and 34, and is therefore rejected using the same prior art and rationale.

As per claim 53, the rejection of claim 52 has been addressed.

All of the limits of Claim 53 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 54, the rejection of claim 52 has been addressed.

All of the limits of Claim 54 have been previously addressed in Claim 14 and is therefore rejected using the same prior art and rationale.

As per claim 55, All of the limits of Claim 55 have been previously addressed in Claims 1, 14, and 34, and is therefore rejected using the same prior art and rationale.

As per claim 56, the rejection of claim 55 has been addressed.

All of the limits of Claim 56 have been previously addressed in Claim 4 and is therefore rejected using the same prior art and rationale.

As per claim 57, the rejection of claim 55 has been addressed.

All of the limits of Claim 57 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 58, the rejection of claim 57 has been addressed.

All of the limits of Claim 58 have been previously addressed in Claim 13 and is therefore rejected using the same prior art and rationale.

As per claim 59, Applicant's background of invention and Dines et al. do not teach a method **wherein the first contract allows the power distributor to terminate the first contract if less than a threshold amount of the required power under the first contract is not supplied within a specified time frame.**

Helms teaches a method **wherein the first contract allows the power distributor to terminate the first contract if less than a threshold amount of the required power under the first contract is not supplied within a specified time frame** (break the contract [¶31], lines 25-29) and [¶60, lines 17-21]).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to have combined the teachings of Helms with that of the Applicant's background of invention and Dines et al. such that the first contract allows the power distributor to terminate the first contract if less than a threshold amount of the required power under the first contract is not supplied within a specified time frame. The motivation to combine the teachings would be to provide increases security to the power distributor that it can meet its

distributions needs in the event that one of the suppliers cannot meet their contractual obligations.

All of the remaining limits of Claim 52 have been previously addressed in Claims 1, 14, 15, and 37, and is therefore rejected using the same prior art and rationale.

As per claim 60, the rejection of claim 59 has been addressed.

All of the limits of Claim 60 have been previously addressed in Claim 4 and is therefore rejected using the same prior art and rationale.

As per claim 61, the rejection of claim 59 has been addressed.

All of the limits of Claim 61 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 62, the rejection of claim 61 has been addressed.

All of the limits of Claim 62 have been previously addressed in Claim 13 and is therefore rejected using the same prior art and rationale.

14. Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and Figures 1 and 2, labeled prior art.) in view of Dines et al. (U.S. Application No. 09/802325) in view

of Helms (U.S. Application No. 10/342899) and in further view of Blanz et al. (U.S. Application No. 10/995039).

As per claim 41, the rejection of claim 39 has been addressed.

All of the limits of Claim 41 have been previously addressed in Claim 11 and is therefore rejected using the same prior art and rationale.

As per claim 42, the rejection of claim 40 has been addressed.

All of the limits of Claim 42 have been previously addressed in Claim 12 and is therefore rejected using the same prior art and rationale.

15. Claims 44 and 63-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and Figures 1 and 2, labeled prior art.) in view of Dines et al. (U.S. Application No. 09/802325) in view of Helms (U.S. Application No. 10/342899) and in further view of Pokorny et al. (U.S. Application No. 10/306881).

As per claim 44, the rejection of claim 40 has been addressed.

All of the limits of Claim 44 have been previously addressed in Claim 7 and is therefore rejected using the same prior art and rationale.

As per claim 63, Applicant's background of invention teaches a method **wherein the first contract contains no force majeure makeup provisions** (Power Purchase Agreement ("PPA") contains no mention of a force majeure makeup provisions [¶12], [¶14, lines 4-9] and [¶22, lines 1-2]).

All of the remaining limits of Claim 63 have been previously addressed in Claims 1, 4, 7, 14, and 15, and is therefore rejected using the same prior art and rationale.

As per claim 64, the rejection of claim 63 has been addressed.

All of the limits of Claim 64 have been previously addressed in Claim 7 and is therefore rejected using the same prior art and rationale.

As per claim 65, the rejection of claim 63 has been addressed.

All of the limits of Claim 65 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 66, the rejection of claim 65 has been addressed.

All of the limits of Claim 66 have been previously addressed in Claim 13 and is therefore rejected using the same prior art and rationale

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16. Claims 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and Figures 1 and 2, labeled prior art.) in view of Dines et al. (U.S. Application No. 09/802325) in view of Pokorny et al. (U.S. Application No. 10/306881) in view of Blanz et al. (U.S. Application No. 10/995039).

As per claim 49, the rejection of claim 48 has been addressed.

All of the limits of Claim 49 have been previously addressed in Claim 11 and is therefore rejected using the same prior art and rationale.

As per claim 50, the rejection of claim 48 has been addressed.

All of the limits of Claim 50 have been previously addressed in Claim 12 and is therefore rejected using the same prior art and rationale.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pollock whose telephone number is 571 270-1465. The examiner can normally be reached on 7:30 AM - 6 PM, Mon-Thu Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on 571 272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GAP

3/12/2008

/Gregory Pollock/
Examiner, Art Unit 4182

Gregory A. Pollock

/Thu Nguyen/
Supervisory Patent Examiner, Art Unit 4182